



Bob Holden
Governor

State of Missouri
OFFICE OF ADMINISTRATION

Post Office Box 809
Jefferson City, Missouri 65102
(573) 751-2387 Fax: (573) 751-9377
TTD: (800) 735-2966 Voice: (800) 735-2466
<http://www.oa.mo.gov/purch/purch.htm>

Jacquelyn D. White
Commissioner

James Miluski
Director
Division of Purchasing
& Materials Management

May 24, 2004

Dear Purchasing Committee Member:

Enclosed are the minutes from the May 5, 2004 Purchasing Committee meeting.

The next meeting is scheduled for **Wednesday**, July 7, 2004, at 9:00 a.m. in Room 400 of the Truman State Office Building. You will receive an agenda for the July meeting at a later date.

If you have any questions, please contact Carla Duppong at 573-751-3273.

Sincerely,

Pat Bacon, CPPB
Program Review Coordinator

Enclosure

State Purchasing Committee Meeting

May 5, 2004

Introductions

Pat Bacon, Program Review Coordinator with the Division of Purchasing & Materials Management (DPMM), called the meeting to order by asking if there were any new Purchasing Committee Members present. No new members were present.

Executive Order 04-09 - Off-Shore Services

Jim Miluski, Director with DPMM, discussed the new Executive Order 04-09 - Off-Shore Services that requires vendors to disclose services performed offshore, and restricts agencies in awarding contracts to vendors of offshore services, unless certain conditions are met. Off-shore services refer to any services outside the continental United States, including Canada and Mexico. Each vendor submitting a bid to the State of Missouri shall be required to provide certification of the location where the contracted services are to be performed and they must disclose whether any work pursuant to existing contracts is being performed offshore. The following language is included in all bids solicited by DPMM:

"If any products and/or services offered under this IFB are being manufactured or performed at sites outside the continental United States, the bidder MUST disclose such fact and provide details with the bid."

Below is the award language that is included in DPMM's Terms and Conditions -

"Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the IFB and (3) complies with Executive Orders 03-27 and 04-09."

Committee members asked if electronic equipment, office supplies, etc., would fall under any of the exclusions. Jim responded that a commodity, which electronic equipment tends to be more of, tends to be guided more by the Chapter 34 Buy American Statute.

Information regarding Executive Order 04-09 is located at
http://www.sos.mo.gov/library/reference/orders/2004/eo04_009.asp

Information regarding Executive Order 03-27 that requires state government agencies to purchase Missouri products and services is located at
http://www.sos.mo.gov/library/reference/orders/2003/eo03_027.asp

As requested, a copy of DPMM's letter sent to current contractors regarding Executive Order 04-09 is included as an attachment to the minutes.

MBE/WBE Presentation

Myra Drummond-Lewis, with the Office of Equal Opportunity, introduced Clarissa Douthit, of YTC Services, Inc. (4318919580-0). Ms. Douthit also introduced Randall Arnold who gave a presentation of the products and services provided by their company. YTC Services is a certified minority and

women-owned vendor located in Kansas City, MO, that provides information technology consulting, computer hardware reselling, and telecommunications services.

YTC Services, Inc.
6724 Troost Ave., Suite 205
Kansas City, MO 64131
Phone: (816) 444-2436
Fax: (816) 444-3066

LETS Video Production Services

Pat introduced Dave Parsons with the Department of Elementary and Secondary Education. Mr. Parsons gave a presentation on the LETS video production services. Lottery and Education Telecommunication Services (LETS) is a partnership between the Missouri Lottery and the Department of Elementary and Secondary Education (DESE). Together, both agencies enjoy the benefits of a broadcast quality video production center featuring a C-band satellite earth station and worldwide web media streaming. These services are available to all state agencies and may provide substantial savings over commercial rates. LETS is set up for the interagency and billing process in SAM II under vendor code I5001500C0 0. Information regarding this program is located at <http://www.dese.mo.gov/divadm/telecom/index.html>

House Bill 600 - Sales/Use Tax

House Bill 600 guidelines, letters, and information effective May 3, 2004 were sent to a purchasing committee representative of the Chapter 34 agencies that had previously submitted the Executive Agency Affidavit and Request for Confidential Information form to the Department of Revenue. House Bill 600 prohibits state agencies from purchasing goods or services from a vendor if either the vendor, or the vendor's affiliates, are not in compliance with Missouri sales/use tax filing and payment requirements. The House Bill 600 compliance requirement applies to purchases estimated over \$3,000, and does not apply to grant payments and/or exempt object code payments.

Carmela Thornton, Assistant Director with DPMM, introduced Dave Zanone, Manager, Sales/Use Tax, with the Department of Revenue. Carmela and Dave addressed the following questions voiced by committee members.

Carmela asked what criteria is used to determine if a vendor is compliant versus non-compliant. (Reference Question 6 on Page 1 of the House Bill 600 Vendor Compliance Questions/Answers document issued on May 5, 2005.) Dave responded that the vendor is checked to see if they are registered with the Department of Revenue, if the vendor is required to collect use/sales tax, and if the vendor is paying use/sales tax to the state.

Carmela also asked if governmental entities, quasi-governmental entities, private colleges, and not-for-profits would need to be checked for compliance. (Reference Question 12 on Page 2 of the House Bill 600 Vendor Compliance Questions/Answers document issued on May 5, 2005.) Dave indicated that governmental entities have to be registered. He stated that the answer is "Yes" for not-for-profit organizations. Following the meeting, it was determined that agencies must verify if quasi-governmental entities, private colleges, and not-for-profits are compliant with House Bill 600. Agencies are not required to verify if governmental entities, including political subdivisions, are compliant with House Bill 600. As a result, the House Bill 600 Compliance Report will be updated to remove any existing governmental entities and political subdivisions.

A committee member asked if a contractor were behind on sales tax payments, would Revenue require full payment on taxes due or would they be set up on scheduled payments. Dave responded that if a business is not in compliance and is also found to have a delinquency and cannot pay the full delinquency, Revenue would set them up on a partial payment plan. This would be an agreement that would have to be signed and have certain provisions. One of the provisions of this agreement is that the vendor's sales tax license would be revoked if payments are not met.

A committee member asked what documentation should be kept in the bid file. Carmela responded that only the information that is sent by the vendor is considered open record and is to be kept in the bid folder. Any correspondence sent by the agency to the vendor, including the letter requesting a "No Tax Due" certificate, and any correspondence, except for the "No Tax Due" certificate, sent by the Department of Revenue related to compliance of that vendor is confidential information, and cannot be kept in the bid file but must be retained in a separate file. Dave also responded that Statute 32.057 RSMo (Confidentiality of tax returns and department records--exceptions--penalty for violation) (<http://www.moga.state.mo.us/statutes/c000-099/0320000057.htm>) states that anything that pertains to taxpayers tax compliance is strictly confidential and is a felony to reveal this information.

A committee member asked if an out of state vendor would need to be compliant before receiving a certificate from the Secretary of State's Office stating that they may do business with the state of Missouri. Dave responded that the a vendor would need be compliant with the Department of Revenue in order to be in good standing with the Secretary of State.

A committee member asked how an agency would determine if hold ups on "No Tax Due" certificates are due to the vendor, or the Department of Revenue. Dave responded that the House Bill 600 compliance requirement is a top priority for the Department of Revenue. Agencies will be contacted if the Department of Revenue is experiencing delays from the vendor. Carmela commented that the vendor should also be in contact with the agency informing them that they are in the process of obtaining the "No Tax Due" certificate, but are experiencing delays with the Department of Revenue. Dave also mentioned that the 90-day validation period on a "No Tax Due" certificate covers the time required to update the House Bill 600 Compliance Report.

A committee member asked whose responsibility it would be to ensure that any vendor's affiliates were in compliance. Dave responded that it would be the vendor's responsibility. The following standard language is included in the Terms and Conditions of DPMM's bid documents. By signing the bid document a vendor is indicating that he and all his affiliates are in compliance.

FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

Similar language incorporated in bid documents of the Department of Health and Senior Services is as follows.

In accordance with House Bill 600, the Department of Health and Senior Services is precluded from contracting with a vendor or its affiliate who makes sales at retail of tangible personal property or for the purpose of storage, use or consumption in this state but fails to collect and properly pay the tax as provided in RSMo 144.

Additional information regarding House Bill 600 is available on the Department of Revenue's website at <http://www.dor.mo.gov/tax/business/sales/hb600.htm>.

A committee member asked if a vendor has several vendor codes listed for their company and not all are in compliance, which vendor code is to be used to award the contract. Carmela responded that the vendor code indicated on their bid is the vendor code to be used to award the contract.

A committee member asked if a contractor needed to be checked against the compliance report each time a purchase order is cut against a contract. Carmela replied that an agency would only need to verify that a contractor is compliant at the time of renewal. Reference House Bill 600 Vendor Compliance – Contract Renewal Guidelines Effective May 3, 2004. She also stated that if a purchase order is to be processed for a one-time purchase exceeding \$3,000.00, the agency would first need to verify that the vendor is compliant.

A committee member commented that the attachment that is included with the letter requesting a copy of a "No Tax Due" certificate ("How To Obtain a Certificate of No Tax Due") only addresses vendors who do owe taxes and asked if this could be revised to address the vendors that do not owe taxes. Dave responded that the attachment could be revised to include this request. Dave also informed committee members that vendors should consider the field offices listed in the attachment as walk-in locations and that vendor phone calls and faxes should be directed to the main office in Jefferson City.

A committee member asked if the letters requesting a "No Tax Due" certificate could be revised by referencing the statute rather than House Bill 600. Carmela indicated that this revision would be made. To be consistent with the Department of Revenue's website (<http://www.dor.mo.gov/tax/business/sales/hb600.htm>), the letters as well as the guidelines have been updated to reference House Bill 600 and Section 34.040.6 RSMo.

A committee member asked if hotels were required to be compliant with House Bill 600. Carmela commented that the House Bill 600 compliance requirement would only apply to a purchase estimated over \$3,000.00 during a (12) month period. Agencies should refer to the current hotel rate guide to obtain bid pricing for hotel expenditures that may exceed \$3,000.00. The hotel rate guide is available for downloading on the Office of Administration, Division of Purchasing and Materials Management's statewide contract search website page (<http://www.oa.mo.gov/purch/contracts/index.htm>). The hotel rate guide does not include all hotels/motels in the state. If an individual will be staying at a location not listed in the hotel rate guide and the hotel/motel expense may exceed \$3,000.00, the agency must solicit competitive bids in accordance with Section 34.040 RSMo. When soliciting competitive bids, the agency should ask for government rates.

Anyone with additional questions regarding House Bill 600 may contact Carmela Thornton at 573-751-3273 or e-mail carmela.thornton@ao.mo.gov or Pat Bacon at 573-751-1108 or e-mail patricia.bacon@oa.mo.gov.

Announcements/Miscellaneous

Wade McDonald, Services Buyer with DPMM, informed committee members that he was in the process of re-bidding the Shredding & Records Disposal Services and that a questionnaire would be sent to agencies requesting information on which agencies are using these services and the prices they are paying.

Pat announced that the next meeting is scheduled for July 7, 2004 in Room 400.

Adjournment